

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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YURMAN STUDIO, INC. and YURMAN
DESIGN, INC.,

Plaintiffs/Counter-Defendants,

- against -

ELENA CASTANEDA and EJEWELER LLC
d/b/a OVERSTOCKJEWELER.COM,

Defendants/Counter-Plaintiffs.
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Civil Action No. 07-1241 (SAS)(HP)
(Action No. 1)

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CARTIER, a division of RICHEMONT NORTH
AMERICA, INC., CARTIER INTERNATIONAL,
N.V., CARTIER CREATION STUDIO, S.A., VAN
CLEEF & ARPELS S.A., VAN CLEEF &
ARPELS, INC., VAN CLEEF & ARPELS
DISTRIBUTION, INC., GUCCI AMERICA, INC.,
and BULGARI S.p.A.,

Plaintiffs,

- against -

ELENA CASTANEDA and EJEWELER LLC
d/b/a OVERSTOCKJEWELER.COM,

Defendants.
----- X

Civil Action No. 07-7862 (SAS)(HP)
(Action No. 2)

**DECLARATION OF LOUIS S. EDERER, ESQ. IN SUPPORT
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

EXHIBIT B

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2 A Yeah, we keep stock, but if you are
3 saying inventory, I thought if we count each one
4 of the styles and put them on the system. We kept
5 stock, but we don't count them.

6 Q Stepping back real quickly.
7 So, you return from P & K Jewelry
8 and you've got a bunch of bags labeled with
9 different monetary amounts. Within those bags
10 you've got a number of different jewelry items,
11 correct?

12 A Yes, um-hum.

13 Q So, when you get back to your
14 offices, what do you do with those bags?

15 A After we ship some of the orders, we
16 ship them on the same day and then we just put,
17 like, the rings on a tray or hang it on the hooks.

18 Q Does the price that you purchase any
19 of the products from P & K Jewelry ever change?

20 A I think so, yes, because sometimes
21 the silver price is going up, so they do change
22 sometimes.

23 Q So, after you remove the products
24 from the bags that you received from P & K
25 Jewelry, is there any way for you to know how much

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2 that you're purchasing infringes on the
3 intellectual property rights of the designer who
4 inspired the piece?

5 MR. ZARIN: Objection. That is
6 asking for a legal opinion.

7 Q You can answer it.

8 A Can you repeat the question?

9 Q Do you conduct any type of
10 investigation to determine if the inspired item
11 that you're purchasing from one of your suppliers
12 infringes on the intellectual property rights of
13 the designer who purportedly inspired the piece?

14 A No.

15 Q Have you ever asked any of your
16 suppliers if any of the products they sell
17 infringe on the intellectual property rights of
18 designers from whom they are inspired?

19 A No.

20 Q Do you believe that the inspired
21 items sold by Overstock Jeweler are of comparable
22 quality to the genuine items that inspired them?

23 A Sorry, I didn't understand.

24 Q Do you believe that the items that
25 are sold on the Overstock Jeweler website as being

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2 major suppliers, like where I got these items from
3 the regs.

4 Q It reflects the cost of any
5 particular item on a specific day that you went
6 back and asked one of the multiple vendors, this
7 appears for many of these products what the cost
8 was; is that right?

9 A I'm not sure I'm understanding.

10 Q Is it the case every time you
11 purchased this product AFPRAO 76SN from P & K
12 Jeweler, Silver Mine and Silver Galore, you always
13 purchased this product for \$10; is that correct?

14 A Not exactly \$10.

15 Q How did you come to the \$10 number
16 that appears in the "Cost" column for this item?

17 A Based on the sticker that was on the
18 ring.

19 Q On what ring?

20 A This ring.

21 Q The ring that you purchased from
22 whom?

23 A That one, I checked it from the
24 stock; so, I don't know. Like I said, I bought
25 this from several places and after we ship the

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2 order, all the extra stuff we put in one tray, so
3 it's all mixed. So, I'm not sure whose sticker it
4 was.

5 Q So, is it fair to say that the cost
6 numbers that appear on the first page of
7 Plaintiff's Exhibit 10 are not accurate?

8 A I would say they are close. I mean,
9 like, if you're asking for each one of the
10 vendors, they are not the same.

11 Q I'm asking you how then you decided
12 which vendor to go to to get your cost number that
13 appears in this column, and how and why you
14 decided to take that vendor's cost as opposed to
15 any other vendor's cost?

16 A It's from which vendor I called the
17 most and whoever gave us the biggest discount.

18 Q And isn't it a fact that not only
19 does the cost of the product vary from supplier to
20 supplier, but in the case of products that contain
21 sterling silver or any other material, the price
22 of which fluctuates, then the price of that item
23 also fluctuates; is that right?

24 A Yes.

25 Q If you turn to Page 2 of this

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exhibit, you will see there are some additional David Yurman inspired items listed and to your right there's a "Cost" column.

Did you go about compiling the data compiled in this "Cost" column in the same manner in which you compiled the data that appears in the "Cost" column on the first page of Plaintiff's Exhibit 10?

A The same manner, yes.

Q So, is it fair to say that the cost figures that appear on the second page of Plaintiff's Exhibit 10 are not exact numbers?

A No, the same answer. It's depending on the store or vendors, and also the silver prices are not always the same price, sometimes they go up and down.

Q Is it fair to say that the cost numbers that appear in the "Cost" column on the second page of Plaintiff's Exhibit 10 are not even mathematically calculated averages of the costs at which you purchased each of these products?

A No, because we don't give inventory, so we only base it on the sticker.

Q I show you a document previously

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2 marked as Plaintiff's Exhibit 136.

3 If you would flip through this
4 document, you will see that this document purports
5 to contain a line item for each of the Bulgari,
6 Cartier, Van Cleef & Arpels and Gucci items at
7 issue in this case, with respect to specific
8 claims of trademark copyright purchases on an
9 infringement or trade dress infringement.

10 Did you play any role in compiling
11 any of the data that appears on this document,
12 Plaintiff's Exhibit 136?

13 A This might have been one of the
14 forms that I filled. I don't remember -- are they
15 the same? Maybe from the cost prices. I don't
16 remember this one.

17 Q Would you have compiled the data
18 that appears in the "Cost Price" column of this
19 document in the same manner that you compiled the
20 data that appears in the "Cost" column of
21 Plaintiff's Exhibit 10?

22 A Yes, based on the sticker price,
23 whatever tag they have.

24 Q Is it fair to say that the cost
25 price listed for each product in Plaintiff's

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2 Exhibit 136 is not an exact number?

3 A Exactly, no.

4 Q Is it fair to say that the cost
5 price listed for each item in Plaintiff's Exhibit
6 136 is not a mathematically calculated cost item
7 for each individual product?

8 A No. I just got it from the sticker.

9 Q Okay. We just talked about the "our
10 price" that appears with each item on the
11 overstock website.

12 Now, I want to focus our attention
13 ~~to the list price. If you can take a look back at~~
14 Plaintiff's Exhibit 34, you'll see that the list
15 price there is \$119.99.

16 Do you see that?

17 A Yes.

18 Q Do you know how that list price is
19 derived?

20 A Normally we just triple it from the
21 sticker price of the item.

22 Q So, the list price is tripled from
23 the wholesale price of the item?

24 A The sticker, the wholesale.

25 Q And what would be the wholesale